



June 18, 2002

Ms. Michelle D. Apodaca
Hilgers & Watkins
310 North Mesa, Suite 614
El Paso, Texas 79901

OR2002-3304

Dear Ms. Apodaca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164476.

The El Paso Community Mental Health and Mental Retardation Center (the "EPCMHMR"), formerly Life Management Center ("LMC"), which you represent, received a request for:

1. All responses or bids submitted by providers, to include: Millennium Mental Health, Avante, Montey and Muniz, and LMC rehabilitation services, in response to a Request for Proposal (RFP) for rehabilitation services between the dates of August 1, 2001 and February 28, 2002.
2. Any and all documentation pertaining to committee notes and or board minutes that reflect approval and/or recommendation for an award of contract to Millennium Mental Health, Avante, Montey and Muniz, and LMC rehabilitation services.

You inform this office that you are making information responsive to item 2 available to the requestor. As for information responsive to item 1, you state that Millennium Mental Health did not object to the disclosure of their proposal and you indicate that you have provided the response or bids submitted by Millennium Mental Health to the requestor. You also state that Monty & Muniz Rehabilitative Services ("Monty-Muniz") and Avante Community Support Services ("Avante") claim that their responses contain confidential business information that is excepted under section 552.110. You indicate that you have made redacted responses or bids submitted by Avante and Monty-Muniz available to the requestor. As for the information you have not made available, you have requested a decision from this office pursuant to section 552.305 of the Government Code, which allows governmental bodies to rely on third parties having a privacy or property interest in the information to submit their own arguments as to why the requested information is excepted from public disclosure.

Section 552.305 allows an interested party ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). However, as of the date of this decision, this office has received no correspondence from Avante or Monty-Muniz. Thus, these parties have not demonstrated that their responsive information must be withheld from public disclosure. *See* Gov't Code § 552.110(a), (b); Open Records Decision Nos. 661 at 5-6 (1999) (business enterprise that claims exception for commercial or financial information under Gov't Code § 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret). Consequently, EPCMHMR must release the remaining portions of these parties' information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

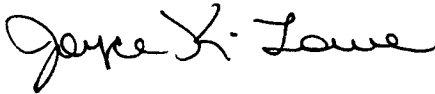
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 164476

Enc: Submitted documents

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